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Before the  
SURFACE TRANSPORTATION BOARD  
Washington, D.C. 20423



STB Docket No. AB-290 (Sub-No. <sup>286</sup>275)

NORFOLK SOUTHERN RAILWAY COMPANY—ADVERSE ABANDONMENT

IN ST. JOSEPH COUNTY, IN

**FILED**

SEP 13 2006

SURFACE  
TRANSPORTATION BOARD

PETITION FOR WAIVER AND EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

ENTERED  
Office of Proceedings

SEP 15 2006

Part of  
Public Record

The City of South Bend, Indiana (the “City”), the Brothers of Holy Cross, Inc. (“BOHC”) and the Sisters of the Holy Cross, Inc. (“Sisters”) (collectively referred to hereinafter as “Petitioners”), by and through the undersigned counsel, jointly petition the Surface Transportation Board (“the Board”) for the waiver of certain of the Board’s abandonment regulations in 49 C.F.R. Parts 1152 and 1105, and for exemption from certain provisions of Subtitle IV of Title 49 of the U.S. Code. Because the City is a local government entity, it is entitled to a waiver of filing fees pursuant to the provisions of 49 CFR § 1002.2(e). In support thereof, Petitioners state as follows:

I. INTRODUCTION

On June 14, 2006, The Chicago, Lake Shore and South Bend Railway Company (CLS&SB) filed a Verified Notice of Exemption with the Board to purchase and operate lines of railroad allegedly owned by Norfolk Southern Railway Company (“NSR”). The proceeding was

**FILING FEE WAIVED**

docketed as STB FD No. 34893, *The Chicago, Lake Shore and South Bend Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company*.<sup>1</sup> By its Petition, CLS&SB announced that it had reached an agreement with Norfolk Southern Railway Company (“NSR”) “to purchase and operate about 3.2 route miles of railroad between MP UV0.0 and between MP UV2.8 and between MP Z09.48 and MP Z09.9 including any ownership interest in the spur leading to Notre Dame University.” CLS&SB expressly conceded that “[n]either Conrail nor NSR has provided service over this trackage since the 1990’s due to lack of customer demand.” After multiple parties, including Petitioners, challenged CLS&SB, NSR notified the Board that it would not reach an agreement to sell the line to CLS&SB and that the proceeding was moot. On August 31, 2006, CLS&SB withdrew its Notice.

The lines in question have been *de facto* abandoned. Not only did NSR fail to maintain the lines after it acquired them several years ago, but sections of the track have been paved over and removed.

Given the absence of any current or future need for rail service over the lines, the track that remains in place serves no useful purpose and constitutes a public nuisance. In summary, the reasons for the proposed abandonment include (i) the *de facto* abandonment of the lines, (ii) the failure of the previous owners to maintain the lines, and (iii) the lack of any current or foreseeable future need for rail service over the lines.

There are also significant safety and environmental concerns that favor removal of the neglected tracks. The lines cross 17 streets in the City, including Lincoln Way West, which carries over 23,000 vehicles per day, and Indiana 933, which carries over 28,000 vehicles per day. Abandonment would permit the City to remove all of the unused rail and repave the streets

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<sup>1</sup> The CLS&SB Notice was challenged by various entities on the grounds that it contained false and misleading information and, pursuant to 49 CFR § 1150.35(f), the Notice was void *ab initio*.

and highways over which the tracks cross. Not only will this improve the roadways, but it would facilitate snow removal in the winter months. In addition, following the abandonment of the lines, the City intends to build a sewer line within the exiting corridor.

The City, which is the lead applicant, will be supported by BOHC and Sisters, whose properties are adversely impacted by the tracks that are located on their private properties. The property owned by BOHC is the site of the campuses of Holy Cross College and Holy Cross Village. Holy Cross Village is northern Indiana's premier continuing care retirement community. Today, Holy Cross Village is in the process of being substantially expanded so that a full continuum of on-site health care can be offered to senior citizens. The property is also the site for other improvements and uses furthering the charitable mission of BOHC (the properties are collectively referred to hereinafter as "the Campus"). Because the remaining tracks are located in the heart of the Campus, they are having an adverse impact on planning for future development.

Sisters own and operate the motherhouse and international headquarters of the Congregation of the Sisters of the Holy Cross and own the land on which the Inn at Saint Mary's ("INN") is located. In addition, Sisters sponsors Saint Mary's College (the "College"), which is located on the immediately adjacent land. One of the lines of railroad at issue herein runs through land that is owned by Sisters adjacent to the College campus and the Inn.

The lines that are located on the BOHC Campus and on the adjacent property owned by Sisters are physically severed from the nation's rail system as a result of abandonments approved by the Interstate Commerce Commission. *See*, ICC Docket No. AB 167 (Sub-No. 407N), *Application of Consolidated Rail Corporation Pursuant to Sections 308(a) and (b) of the Regional Rail Reorganization Act of 1973, As Amended by Section 1156 of the Northeast Rail*

*Service Act of 1981, for Approval of the Abandonment of the South Bend Secondary Track in St. Joseph County, State of Indiana, and ICC Docket No. AB 167 (Sub-No. 672N), Conrail Abandonment in Berrien County, MI and St. Joseph County, IN.*

As will be explained in detail in the adverse abandonment application, there are no current or future shippers that would utilize rail freight service, even if the line were to be rehabilitated. As part of its application, the City will present the results of a recent survey that shows that there are no known shippers in the city of South Bend who have any plans to use freight rail service at facilities that are located on the lines.

The same is true with respect to the portion of the lines that lie outside of the city limits of South Bend. There are no potential customers located on any portion of the subject lines located to the north and northeast of the St. Joseph River that would utilize rail freight service in the future. Neither BOHC nor Sisters will have any use for rail freight service. Moreover, Applicants are informed and believe that the University of Notre Dame, which is the only other institutional entity located to the north and northeast of the river, does not have any plans to have coal delivered to its facilities by rail. In this regard, the Board's attention is invited to a news article, *Notre Dame drops coal-by-rail option*, published in the South Bend Tribune on June 22, 2006. In that article, John Affleck-Graves, Notre Dame's Executive Vice President, is quoted as stating that "The university has no intention of entering into an agreement with the South Bend short-line railway company to deliver coal." Given that statement, which has not been retracted, there is no need to rehabilitate the track that is located to the north and northeast of the St. Joseph River, particularly since the track has already been physically severed from the line that originates in South Bend at MP 0.0.

## II. WAIVERS

The Board and its predecessor have consistently found that much of the information required by the Board's governing regulations in an abandonment application is largely inapplicable or irrelevant to the issues in an adverse abandonment case. *CSX Corporation and CSX Transportation, Inc.—Adverse Abandonment—Canadian National Railway Company and Grand Trunk Western Railroad Inc.*, STB Docket No. AB-31 (Sub-No. 38) (served March 2, 2001); *Chelsea Property Owners—Abandonment—Portion of Consolidated Rail Corporation's West 30<sup>th</sup> Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub-No. 1094)(served July 19, 1989); and *City of Rochelle, Illinois—Adverse Discontinuance—Rochelle Railroad Company*, STB Docket No. AB-549 (served June 5, 1998). Consistent with the foregoing precedents, waiver of the following provisions is requested:

### Waiver of filing fees.

The City, will be the lead applicant. Because City is a local government entity, it is entitled to a waiver of the filing fees for the application (\$18,100) and for the instant waiver request (\$1,400). pursuant to the provisions of 49 CFR § 1002.2(e).

Notice of Intent. Petitioners are prepared to file and publish a notice of the proposed adverse abandonment. In view of their other waiver requests, Petitioners believe the wording of the notice, as prescribed in 49 C.F.R. 1152.21, is inappropriate for use in this proceeding. They therefore ask for the waiver of the provisions of 49 C.F.R. 1152.21, proposing instead to be allowed to use the form of notice as set forth in Attachment A. Such relief is consistent with the

Board's decision in *Seminole Gulf Railway, L.P.—Adverse Abandonment—In Lee County FL*, STB Docket No. AB-400 (Sub-No. 4) (served June 9, 2004).

Petitioners request a waiver of 1152.20(a)(2) insofar as it requires service on significant users of the lines. There are no known users of the lines as no rail service has been provided for over a decade.

Petitioners request a waiver of 1152.20(a)(2)(xii), requiring the service of the notice on the headquarters of all duly certified labor organizations that represent employees on the affected rail line. Because no rail service has been performed over the lines for over a decade, there are no known railroad employees who would be affected by this adverse abandonment. Last, it has been consistently held that “employee protective conditions are not imposed in cases involving complete abandonments.” *Modern Handicraft, Inc.--Abandonment in Jackson County, MO*, 363 I.C.C. 969, 973 (1981). *See also, Northhampton and Bath R. Co.--Abandonment*, 354 I.C.C. 784, 785-787 (1978); *Wellsville, Addison & Galeton R. Corp.--Abandonment*, 354 I.C.C. 744, 745-746 (1978).

Petitioners request a waiver of 1152.20(a)(3), which requires that the notice be posted at each of the railroad's stations. Upon information and belief, NSR does not have any agency stations or terminals through which business for the involved lines is received or forwarded. In connection therewith, Petitioners understand that it is not necessary to seek an exemption from 49 U.S.C. 10903(a)(3)(B) as the provisions thereof apply only to carriers. *See, Napa Valley Wine Train, Inc.--Adverse Abandonment--In Napa Valley, CA*, STB Docket No. AB-582 (served March 30, 2001), “exemption requests [with respect to the underlying statutory provisions of 49 U.S.C. 10903(c) and the notice provisions in 49 U.S.C. 10903(a)(3)] are unnecessary because the statute imposes these requirements only on carriers.”

Petitioners request a waiver of 1152.20(a)(4), which requires newspaper publication of a notice of abandonment. In seeking this exemption, Petitioners agree to serve copies of their notice of intent to file an abandonment, this petition, and the related abandonment application on NSR, Notre Dame University and the parties listed in 49 C.F.R. 1152(a)(2)(ii-xi).

Petitioners request a waiver of 1152.20(c), which requires service of copies of the Environmental and Historic Report at least 20 days in advance of the filing of the application, as well as a waiver of the provisions of 1105.7 and 1105.8 that describe and pertain to the Environmental and Historic Reports. There are no known railroad structures on the rights-of-ways that cross through the two campuses, other than the track, that are over 50 years old.

Because the lines have not been operated for over a decade, resulting in a *de facto* abandonment, the proposed adverse abandonment, if it were to come into effect, would not cause any change in any carrier operations. The proposed adverse abandonment, therefore, will come within the provisions of 49 C.F.R. 1105.6(c)(2), requiring no environmental or historical documentation in any action that does not result in significant changes in carrier operations. *See, e.g., Salt Lake City Railroad Company, Inc.—Adverse Abandonment—Line of Utah Transit Authority in Salt Lake City, UT*, STB Docket No. AB-520 (served August 24, 1999).

In any event, the abandonment will not have any impact on any historic structures associated with the railroad, because there are none. Consistent with the provisions of 1105.8(e), the requirements related to the historic report should be waived because the information sought “is not necessary to determine the presence of historic properties and the effect of the proposed action on them.”

Because rail freight service has not been needed by any known shipper or receiver that is located on or near the lines over a decade, the abandonment would have no impact on noise and

air pollution. By removing the possibility that freight rail service would somehow be reinstated over these lines, an abandonment would also alleviate the significant safety issues associated with the operation of rail service through college campuses and a retirement community, especially given the failure of the prior railroads to comply with the underlying grant provision that requires the railroad to maintain fences along the right-of-way. The removal of the tracks, portions of which are overgrown with weeds, would also contribute to the aesthetic value of the two campuses by eliminating the eyesore associated with the deteriorated crossties and rail.

Content of the Application. NSR has not included the lines that are the subject of the proposed adverse abandonment in category 1 of its system diagram map (“SDM”). Accordingly, Petitioners ask for the waiver of 49 C.F.R. 1152.22(a)(4) and (5), and 1152.24(e)(1), which require submission of a detailed map of the subject line and reference to the carrier’s SDM.<sup>2</sup> A waiver is consistent with the Board’s finding in *Napa Valley*, *supra*, that compliance with the SDM requirements “is not feasible by a third part applicant.” Other adverse abandonment cases in which waivers and exemptions from SDM requirements have been granted include the following: *The Western Stock Show Association--Abandonment Exemption--In Denver, CO*, STB Docket No. AB-452 (Sub-No. 1X) (served October 19, 1995); *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH*, STB Docket No. AB-31 (Sub-No. 30) (served February 12, 1998). (the filing of a SDM is not appropriate in the context of an adverse abandonment).

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<sup>2</sup> Petitioners also seek a waiver of all requirements in 49 C.F.R. 1152.10-14. Said provisions relate to filing, amending and providing notice to the public through a carrier’s SDM and establish a two-month waiting period between amendment of the SDM and filing the corresponding abandonment application. Waiver of these regulations is appropriate because Petitioners/Applicants do not own the affected line and cannot file or amend the SDM filings of NSR. As the Board recognized in *Napa Valley Wine Train, Inc.--Adverse Abandonment--In Napa Valley, CA*, STB Docket No. AB-582 (served March 30, 2001), “exemption requests [with respect to the underlying statutory provisions of 49 U.S.C. 10903(c) and the notice provisions in 49 U.S.C. 10903(a)(3)] are unnecessary because the statute imposes these requirements only on carriers.”



Petitioners ask for the waiver of 49 C.F.R. 1152.22(b)-(d). Although Petitioners are well aware that there have been no rail operations over the lines for over a decade, they are without knowledge of the condition of the affected railroad lines and the estimated costs of deferred maintenance and rehabilitation. The same is true regarding the revenue and cost data associated with the lines.

As previously discussed, Petitioners ask for the waiver of 49 C.F.R. 1152.22(f), requiring the disclosure of the information relating to the environmental impact of the proposed adverse abandonment. Given the lack of rail freight service for over a decade, it is again respectfully submitted that the adverse abandonment will have no impact on the environment.

Petitioners are prepared to submit a draft Federal Register notice with its application. In view of its other waiver requests, Petitioners believe the wording of the notice, as prescribed in 49 C.F.R. 1152.22(i), is inappropriate for use in these proceedings. Therefore, Petitioners ask for the waiver of 49 C.F.R. 1152.22(i) and proposes instead to be allowed to use the form of notice as set forth in Attachment B.

Public use, trails and OFA conditions. With respect to those portions of the lines that are located to the north and northeast of the St. Joseph River, Petitioners are seeking an exemption from the public use, trails, and OFA conditions in 49 C.F.R. 1152.28,<sup>3</sup> 49C.F.R. 1152.29, and 49 C.F.R. 152.27,<sup>4</sup> on the assumption that the Board will find, based upon Petitioners' application, that the abandonment of the line is consistent with the present and future public convenience and necessity, and that the public interest does not require retention of the Board's jurisdiction over those portions of the lines. *Union Pacific Railroad Company—Abandonment Exemption—In Monroe County, IA*, STB Docket No. AB-33 (Sub-No. 153X) (served September 1, 2000);

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<sup>3</sup> To the extent that it may be necessary, Petitioners seek an exemption from 49 U.S.C. 10905.

<sup>4</sup> To the extent that it may be necessary, Petitioners also seek an exemption from 49 U.S.C. 10904.

*Doniphan, Kensett and Searcy Railway—Abandonment Exemption—In Searcy, White County, AR*, STB Docket No. AB-558X (served May 6, 1999). Adherence to the procedures will serve no useful purpose in view of the findings to be requested by Petitioners and is not necessary to carry out the railroad transportation policy of 49 U.S.C. 10101.

With respect to the portion of the line that is located within the City of South Bend, City hereby provides notice that it is interested in acquiring the right of way for interim trail use pursuant to 16 U.S.C. 1247(d). The requested trail use will extend from Milepost 0.0 to the Milepost on the northeastern bank of the St. Joseph River.

The foregoing waiver requests are consistent with the waivers heretofore granted by the Board in adverse abandonment proceedings. *See, e.g., Seminole Gulf Railway, L.P.—Adverse Abandonment—In Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4) (served June 9, 2004); *Napa Valley Wine Trains, Inc.—Adverse Abandonment—In Napa Valley, CA*, STB Docket No. AB-582 (served March 29, 2001); *CSX Corporation and CSX Transportation, Inc.—Adverse Abandonment—Canadian National Railway Company and Grand Trunk Western Railroad Inc.*, STB Docket No. AB-31 (Sub-No. 38) (served March 2, 2001); *Salt Lake City Railroad Company, Inc.—Adverse Abandonment—Line of Utah Transit Authority in Salt Lake City, UT*, STB Docket No. AB-520 (served August 24, 1999). Petitioners respectfully request that their waiver requests be granted.

Contents of Abandonment Application. Should the Board grant the requested waivers, the abandonment application will include only the following items of information:

(a) General

(1) Exact name of applicants

(2) Whether applicants are common carriers by railroad Subject to

49 U.S.C. Subtitle IV, chapter 105;

(3) Relief sought;

(4) Detailed map of the subject line;

(6) Detailed statement of reasons for filing application

(7) Name, title, and address of applicants' representatives;

(8) List of all Postal Service ZIP Codes that the line traverses; ...

(e) Rural and community impact;

(h) Additional information; and

(i) Draft Federal Register notice.

The normal informational requirements of the Board's abandonment regulations should be waived to the extent described above for the reasons previously expressed. In the final analysis, because the lines have been dormant for the past decade, and because there is no indication that there is any need for future rail service over the lines in question, the public convenience and necessity require and permit the abandonment of the lines.

### III. REQUEST FOR EXPEDITED CONSIDERATION

Petitioners intend to file their adverse abandonment application on or soon after October 2, 2006. All concerned will benefit from prompt consideration of the abandonment application.

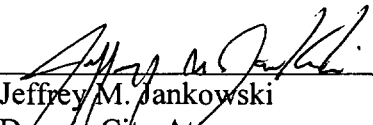
The Board's regulations and decisions indicate a preference that waivers be requested and obtained before an adverse application is filed. *See*, 49 C.F.R. 1152.24(e)(5); *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH*, STB Docket No. AB-31 (Sub-No. 30) (served February 12, 1998). Therefore, Petitioners respectfully


request expedited consideration of this Waiver Petition and a Board decision issued and effective on or before September 15, 2006.

#### CONCLUSION

For all the above-stated reasons, the Board should grant the requested waivers of certain of the Board's abandonment regulations and exemption from certain of the provisions of subtitle IV of Title 49 of the U.S. Code in connection with the anticipated filing of an adverse abandonment application.

Respectfully submitted,

  
\_\_\_\_\_  
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Counsel to the Brothers of Holy Cross, Inc. and The  
Sisters of the Holy Cross, Inc.

Dated: September 5, 2006

ATTACHMENT A  
NOTICE OF ADVERSE ABANDONMENT

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

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STB Docket No. AB 290 (Sub-No. 275)

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NORFOLK SOUTHERN RAILWAY COMPANY  
ADVERSE ABANDONMENT  
ST. JOSEPH COUNTY, IN

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NOTICE OF ADVERSE ABANDONMENT  
OF  
THE CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC. AND THE  
SISTERS OF THE HOLY CROSS, INC.

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The City of South Bend, the Brothers of Holy Cross, Inc. and the Sisters of the Holy Cross, Inc. (hereinafter “Applicants”) give notice that on or about October 2, 2006, they intend to file with the Surface Transportation Board (“the Board”), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.48 and MP Z09.9 in St. Joseph County, IN. The affected railroad lines are situated in U.S. Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629 and 46556; they traverse no other U.S. Postal Zip Codes and the lines include no stations. The reasons for the proposed abandonment include (i) the *de facto* abandonment of the lines, (ii) the failure of the previous owners to maintain the lines, and (iii) the lack of any foreseeable future need for rail service.

In addition, there are significant safety and environmental concerns. The lines cross 17 streets in the city of South Bend, including Lincoln Way West, which carries over 23,000 vehicles per day, and Indiana 933, which carries over 28,000 vehicles per day. In the absence of proper signals,

which do not exist, it would be necessary to blow a whistle repeatedly on average about every 900 feet in order to cross over these streets. Moreover, since there are no existing signals, a train would have to be accompanied by a flagman walking in front to stop traffic, thereby creating vehicular congestion and the increase of pollutants associated with stalled traffic.

The lines also traverse the properties and campuses of the Sisters of the Holy Cross, Inc. (“Sisters”) and the Brothers of the Holy Cross, Inc. (“BOHC”). The lines that traverse their campuses have been *de facto* abandoned for over a decade and have not been maintained during that period of time. Because of the failure to maintain the line, the easement underlying the portion of the track between MP A09.48 and MP Z09.9 expired a number of years ago. As a result, Sisters and the BOHC have a legitimate claim under Indiana law to a reversionary interest. In addition, the lines that traverse the campuses are no longer physically connected with the portion of the line that begins at MP UV0.0 for a number of years. The tracks that formerly extended to the north and to the south of the tracks between former MP Z09.6 and MP Z10.5 have been physically removed pursuant to authority granted by the Interstate Commerce Commission.

Sisters and BOHC also support the formal abandonment of the lines because the deteriorating crossties and track currently pose a safety hazard to students and to residents. Moreover, resumption of rail service through the campuses would pose an even greater safety hazard, particularly because the railroad is currently in violation of the covenant and agreement that a fence would be erected and maintained along the right-of-way by the railroad.

Based on information in the possession of the Applicants, the lines do not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Applicants’ possession will be made available promptly to those requesting it.

The public record of the Board contains a system diagram map for Norfolk Southern Railway Company. However, the lines do not appear on its system diagram map as being potentially subject to abandonment.

The application, when filed, can be viewed following its filing on the Board's webpage, [www.stb.dot.gov](http://www.stb.dot.gov), or a copy can be secured from Applicants' counsel, whose name and address appear below. The application will include Applicants' entire case for abandonment.

Any interested person, after the application is filed on or about September 1, 2006, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 1925 K Street, N.W., Washington, D.C. 20423-001, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, Jeffrey M. Jankowski, Deputy City Attorney, 1400 County-City Building, 227 W. Jefferson Boulevard, South Bend, IN, 46601-



1830 and Richard H. Streeter, Barnes & Thornburg LLP, Suite 900, 750 17<sup>th</sup> Street, N.W., Washington, D.C. 20006. Except as otherwise set forth in 49 C.F.R. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 565-1592 or refer to the text of the abandonment regulations at 49 C.F.R. 1152.1, et seq., which can be viewed at [www.gpo.gov/nara.cfr](http://www.gpo.gov/nara.cfr).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will

generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

ATTACHMENT B  
FEDERAL REGISTER NOTICE

FEDERAL REGISTER NOTICE  
BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

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STB Docket No. AB 290 (Sub-No. 275)

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NORFOLK SOUTHERN RAILWAY COMPANY  
ADVERSE ABANDONMENT  
ST. JOSEPH COUNTY, IN

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The City of South Bend, Indiana, the Brothers of Holy Cross, Inc. and The Sisters of the Holy Cross, Inc. give notice that on October 2, 2006, they filed with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.48 and MP Z09.9 in St. Joseph County, IN. The affected railroad lines are situated in U.S. Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629 and 46556; they traverse no other U.S. Postal Zip Codes and the lines include no stations.

The public record of the Board contains a system diagram map (SDM) for Norfolk Southern Railway Company (NSR). The NSR SDM does not reflect the lines as being potentially subject to abandonment.

Based on information in the possession of the Applicants, the line does not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Applicants' possession will be made available promptly to those requesting it. The application can be viewed on the Board's webpage, [www.stb.dot.gov](http://www.stb.dot.gov), or a copy can be

secured from Applicants' counsel, whose name and address appear below. The Applicants' entire case for abandonment was filed with the application.

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days after the application is filed. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 1925 K Street, N.W., Washington, D.C. 20423-0001, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel, Jeffrey M. Jankowski, Deputy City Attorney, 1400 County-City Building, 227 W. Jefferson Boulevard, South Bend, IN, 46601-1830 and Richard H. Streeter, Barnes & Thornburg LLP, Suite 900, 750 17<sup>th</sup> Street, N.W., Washington, D.C. 20006. Written comments and protests must indicate the proceeding designation STB No. AB-290 (Sub-No. 275).

Except as otherwise set forth in 49 C.F.R. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 565-1592 or refer to the text of the abandonment regulations at 49 C.F.R. 1152.1, et seq., which can be viewed at [www.gpo.gov/nara.cfr](http://www.gpo.gov/nara.cfr).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The

deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Petition was served this 6th day of September, 2006, by first-class mail, postage prepaid, and by e-mail as designated, on the following named individuals:

James R. Paschall  
Senior General Attorney  
Greg E. Summy  
General Solicitor  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

A handwritten signature in black ink, appearing to read "R.H. Streeter", written over a horizontal line.

Richard H. Streeter